

Serial No.: 10/661,006

Group Art Unit: 3751

REMARKS/ARGUMENTS

Claims 1 through 4, 6 through 8, 10 through 32, and 35 through 43 are presented for consideration upon entry of the instant amendment which is respectfully requested. Claims 5, 9, 33, and 34 have been cancelled. Claims 7, 16, 19, 22, 23, 35, and 42 have been withdrawn.

Applicant notes with appreciation the detailed review of the application by the Examiner. The application has been amended to obviate the asserted objections.

The Action objects to the drawings under 37 C.F.R. 1.83(a) as failing to show every feature of the invention specified in claims 4, 10, 18, and 25.

The Action asserts that the drawings must show every feature of the invention specified in the claims. Applicants respectfully disagree. 35 U.S.C. 113 provides that the applicant shall furnish a drawing where necessary for the understanding of the subject matter to be patented.

Claim 4 provides the foot spa of claim 1 and further provides a vibrating actuator cooperative with the bottom wall and/or the sidewalls to provide a therapeutic vibratory effect. Page 9, lines 11 through 18 of the specification provides that the "[h]ousing 5 preferably also has a vibration mechanism for imparting a vibratory motion to bottom wall 6. It will be appreciated by those skilled in the art that any of the known methods suitable for generating a vibratory motion in a foot spa may be used in foot spa 1 and are within the scope of the present invention. For example, these methods include, but are not limited to, a motor driven shaft having an eccentric weight attached thereto and an unbalanced rocker arm." Applicant respectfully submits claim 4 in combination with the specification and figures provides for proper understanding of the subject matter to be patented. Thus, a drawing is not necessary for the understanding of the subject matter of claim 4 to be patented. Reconsideration and withdrawal of the objections to the drawings are respectfully submitted.

Serial No.: 10/661,006

Group Art Unit: 3751

Claim 25 provides the foot spa of claim 17, and further provides an ion and/or ozone emitter for emitting ions into the fluid. Page 7, lines 15 through 29, of the application provides:

an ionic generator/emitter for generating charged ions and providing ionic therapy may be incorporated into foot spa 1. The stone therapy unit and the ionic generator/emitter (as well as any other types of therapy delivery units) may be disposed on any part of housing 5 in a position uncovered by fluid even when fluid is disposed in reservoir 9.

In one aspect of the present invention, the stone therapy unit and the ionic generator (as well as any other types of therapy delivery units, such as, for example, stimulus attachments 13) may be disposed on bottom wall 6 and/or sidewalls 7, in a position that may be covered by fluid when fluid is optionally placed in reservoir 9.

Applicant respectfully submits claim 25 in combination with the specification and figures provides for proper understanding of the subject matter to be patented. Thus, a drawing is not necessary for the understanding of the subject matter of claim 25 to be patented. Reconsideration and withdrawal of the objections to the drawings are respectfully submitted.

Claim 10 provides the foot spa of claim 8 and further recites that at least one of the one or more fluid outlets have one or more adjustable nozzles for providing any of a variety of different therapeutic jetting effects. Page 9, lines 1 through 3 provides that "fluid outlets 17 can have nozzles 18 that are adjustable for varying the turbulence of the fluid that is exhausted from the outlets." Page 9, lines 4 through 6, further provides that "as with fluid outlets 17, fluid inlets 19 are preferably part of fluid transport assembly 65 and facilitate in pumping and/or recycling fluid in reservoir 9." Thus, at least Figures 1 and 3 show fluid outlets 17 can have nozzles 18 that are adjustable for varying the turbulence and a fluid transport assembly 65, and, thus, show at least one of the one or more fluid outlets have one or more adjustable nozzles for providing any of a variety of different therapeutic jetting effects, as recited by claim 10. Therefore, Applicants respectfully submit the Figures show the features recited in claim 10. Reconsideration and withdrawal of the objections to the drawings are respectfully submitted.

Serial No.: 10/661,006

Group Art Unit: 3751

Claim 18 provides the foot spa of claim 17, and further provides that the raised portion accommodates a heat control, an attachment receptor for separably receiving and rotatably retaining one or more stimulus attachments to provide, at the user's option, therapeutic stimulus to a foot placed thereon, an infrared surface heater, and/or one or more aeration and/or drainage apertures therein. The Action provides that "aeration and/or drainage apertures" set forth in claim 18 must be shown or the features cancelled from the claims. Page 7, lines 4 through 10 of the application provides that "the raised surface can have apertures 15 to emit and/or receive fluid therefrom. For example, air can be emitted therefrom to dry or otherwise influence the foot of the user. Alternatively, or in addition, apertures 15 can be suitable for allowing fluid dripping from the user's feet to drain through the raised surface and into reservoir 9 instead of collecting on a top surface thereof." Page 14, lines 17 through 21, "[f]or example, referring to FIG. 1, foot spa 1 can have one or more air conduits 45 that are in fluid communication with a source of air 46 flow, such as an air pump. One or more air conduits 45 are connected to air exhausts 47, which are in fluid communication with reservoir 9." Page 14, lines 22 through 23 also provides "the circulation network can have aeration outlets opening into reservoir 9." Thus, at least Figures 1, 7 and 9 show apertures 15 to emit and/or receive fluid therefrom that are aeration outlets opening into reservoir 9 along with one or more air conduits 45 that are connected to air exhausts 47, and, thus, show at least one embodiment of one or more aeration and/or drainage apertures therein, as recited by claim 18. Therefore, Applicants respectfully submit the Figures show the features recited in claim 18. Reconsideration and withdrawal of the objections to the drawings are respectfully submitted.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The Action asserts the subject matter set forth in claim 32 could not be found in the specification. Page 9, lines 21 through 26 of the application provides that "[c]ontrol panel 21 preferably has a number of control buttons 22 for controlling the various systems associated with foot spa 1, including, for example, on/off and high/low buttons. This allows the user to separately use the various features of the foot spa 1 to achieve a desired therapeutic effect." Furthermore, page 15, lines 1 through 7 of the

Serial No.: 10/661,006

Group Art Unit: 3751

application provides "control switches 22, as well as roller actuator 50 are preferably used to control the functions of foot spa 1. For example, one button can be used to control on/off (i.e., activation/deactivation) of foot spa 1 and another button can be used to control the activation/deactivation of the fluid jets, heater, and/or aerating system." Thus, Applicants respectfully submit proper antecedent basis for the claimed subject matter of claim 32 is in the application and drawings. Reconsideration and withdrawal of the objections to the specification are respectfully submitted.

Claim 10 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art. As discussed above, page 9, lines 1 through 3 provides that "fluid outlets 17 can have nozzles 18 that are adjustable for varying the turbulence of the fluid that is exhausted from the outlets." Page 9, lines 4 through 6, further provides that "as with fluid outlets 17, fluid inlets 19 are preferably part of fluid transport assembly 65 and facilitate in pumping and/or recycling fluid in reservoir 9." Thus, the specification and at least Figures 1 and 3 show fluid outlets 17 can have nozzles 18 that are adjustable for varying the turbulence and a fluid transport assembly 65. Therefore, Applicants respectfully submit, at least one of the one or more fluid outlets that have one or more adjustable nozzles for providing any of a variety of different therapeutic jetting effects, as recited by claim 10, are described in the specification in such a way as to enable one skilled in the art. Reconsideration and withdrawal of the rejection are respectfully submitted.

Claim 18 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art. As discussed above, Page 7, lines 4 through 10 of the application provides that "the raised surface can have apertures 15 to emit and/or receive fluid therefrom. For example, air can be emitted therefrom to dry or otherwise influence the foot of the user. Alternatively, or in addition, apertures 15 can be suitable for allowing fluid dripping from the user's feet to drain through the raised surface and into reservoir 9 instead of collecting on a top surface thereof." Page 14, lines 17 through 21, "[f]or example, referring to FIG. 1, foot spa 1 can have one or more air conduits 45 that are in fluid communication with a source of air 46 flow, such as an air pump. One or more air conduits 45 are connected to

Serial No.: 10/661,006

Group Art Unit: 3751

air exhausts 47, which are in fluid communication with reservoir 9." Page 14, lines 22 through 23 also provides "the circulation network can have aeration outlets opening into reservoir 9." Thus, the application and at least Figures 1, 7 and 9 describe apertures 15 to emit and/or receive fluid therefrom that are aeration outlets opening into reservoir 9 along with one or more air conduits 45 that are connected to air exhausts 47. Therefore, Applicants respectfully submit, one or more aeration and/or drainage apertures therein, as recited by claim 18, are described in the specification in such a way as to enable one skilled in the art. Reconsideration and withdrawal of the rejections are respectfully submitted.

Claims 21 and 31 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art. *The American Heritage® Dictionary of the English Language, Fourth Edition* provides that a controller is a regulating mechanism. Page 16, line 24 through 29 of the application, provides that "[c]ontrol panel 21 preferably has the controls for controlling the various features of foot spa 1 of the present invention. Likewise, remote control 48 preferably has the controls for controlling the various features of foot spa 1 either directly or indirectly via the controls of control panel 21." Page 16, line 32 through page 17 line 18 of the application provides:

Referring to FIG. 18, function controls located on remote control 48, and thus controlling associated functions of foot spa 1 include, for example, an on/off control 52, vibration control 53, bubble control 54, fluid-jet control 55, and program control 56.

In brief, on/off control 52 is sequentially depressed to activate/deactivate operation of foot spa 1. Vibration control 53 is sequentially depressed to activate/deactivate the vibratory mechanism of foot spa 1. Bubble control 54 is sequentially depressed to activate/deactivate the aerated bubbling function of foot spa 1. Fluid-jet control 55 is sequentially depressed to activate/deactivate the fluid "jetting" function of foot spa 1. Thus, complete control of the functional operation of foot spa 1 can be accomplished without having to manipulate controls located on the foot spa. Activation or deactivation of a particular function commences generation of a control signal that is transmitted to and received by receiver 49. The control signal received by the receiver is processed to effectuate the associated function.

Furthermore, page 8, lines 18 through 19 of the application provides "[h]eat control 14 is preferably connected to heater 30 to allow the user to manipulate or control the

Serial No.: 10/661,006

Group Art Unit: 3751

temperature in reservoir 9." Therefore, Applicants respectfully submit, a regulating mechanism or controller for controlling any of a variety of operative functions associated with the foot spa, in which the controller is remote from the foot spa, as recited by claim 21, and a controller for controlling any of a variety of operative functions associated with the foot spa, in which the variety of operative functions can be selected from a group consisting of a heating action, a jetting action, a vibratory action, and any combination thereof, as recited by claim 31, are described in the specification in such a way as to enable one skilled in the art. Reconsideration and withdrawal of the rejections are respectfully submitted.

Claim 25 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art. As discussed above, Page 7, lines 15 through 29, of the application provides:

an ionic generator/emitter for generating charged ions and providing ionic therapy may be incorporated into foot spa 1. The stone therapy unit and the ionic generator/emitter (as well as any other types of therapy delivery units) may be disposed on any part of housing 5 in a position uncovered by fluid even when fluid is disposed in reservoir 9.

In one aspect of the present invention, the stone therapy unit and the ionic generator (as well as any other types of therapy delivery units, such as, for example, stimulus attachments 13) may be disposed on bottom wall 6 and/or sidewalls 7, in a position that may be covered by fluid when fluid is optionally placed in reservoir 9.

Therefore, Applicants respectfully submit, an ion and/or ozone emitter for emitting ions into the fluid, as recited by claim 31, are described in the specification in such a way as to enable one skilled in the art. Reconsideration and withdrawal of the rejections are respectfully submitted.

Claims 36 through 41 is rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art. Page 15, lines 2 through 3 of the application provides that the "roller actuator 50 [is] preferably used to control the functions of foot spa 1." Page 16, lines 1 through 2 of the application provide that the "roller actuator 50 may be manipulated

Serial No.: 10/661,006

Group Art Unit: 3751

(i.e., pushed and turned, respectively) by a user's foot." Therefore, Applicants respectfully submit, a roller actuator, as recited by claims 36 through 41, are described in the specification in such a way as to enable one skilled in the art. Reconsideration and withdrawal of the rejections are respectfully submitted.

Claim 10 is rejected under 35 U.S.C. §112, second paragraph as being indefinite. The Action asserts claim 10 depends from a cancelled claim. Claim 10 has been amended to depend from claim 1.

Claim 32 is rejected under 35 U.S.C. §112, second paragraph as being indefinite. The Action asserts that the metes and bounds of this language is neither discernable from the instant application, nor evident. As discussed above, Page 9, lines 21 through 26 of the application provides that "[c]ontrol panel 21 preferably has a number of control buttons 22 for controlling the various systems associated with foot spa 1, including, for example, on/off and high/low buttons. This allows the user to separately use the various features of the foot spa 1 to achieve a desired therapeutic effect." Furthermore, page 15, lines 1 through 7 of the application provides "control switches 22, as well as roller actuator 50 are preferably used to control the functions of foot spa 1. For example, one button can be used to control on/off (i.e., activation/deactivation) of foot spa 1 and another button can be used to control the activation/deactivation of the fluid jets, heater, and/or aerating system." Thus, Applicants respectfully submit, In light of the specification, claim 32 is definite.

Claims 1, 2, 4, 6, 8, 11, 12, 14, 15, 17, 20, 21, 24, 26, 27, and 29 through 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa U.S. Patent No. 4, 620, 529 (hereinafter "Kurosawa").

Claim 1 provides, in part, for a remote control.

Kurosawa provides a foot bath having a foot bath body into which feet of a user are to enter.

Serial No.: 10/661,006

Group Art Unit: 3751

Barradas provides a portable foot bath with a tub fabricated of rubber or a soft plastic.

Kurosawa provides "[a]n operating panel 29 is provided to automatically control the power of the jet water stream and the rhythm vibrator 16." (col. 3, lines 51-23). Page 8 of the Action concedes that the control panel/controller of Kurosawa is not "remote." Therefore, Kurosawa does not disclose or suggest a remote control, as recited in claim 1.

Page 9, line 29 through page 10, line 1 of the application provides "a remote control can be used for controlling the functions of foot spa 1, as well as a tethered control device. The remote control and/or tethered control device can be used in conjunction with control panel 21 or can replace control panel." Thus, the application distinguishes between a remote control and a tethered control device. Furthermore, page 16, lines 12 through 14 of the application provides the remote control has "associated electronic circuitry for wirelessly transmitting a control signal" and that "[w]ireless communication between remote control 48 and foot spa 1 may be accomplished using infrared, radio frequency (RF), sonic, or any other wireless communication format using nay applicable protocol." As clearly shown in Figure 6, the control unit of Barradas is a tethered control device that is not wireless. Therefore, Barradas cannot cure any deficiency noted above with respect to Kurosawa.

Accordingly, Applicants respectfully submit that Kurosawa and Barradas alone or in combination fail to disclose or suggest all of the claimed features recited in claim 1, as well as claims 2, 4, 6, 8, 11, 12, 14, 15, 17, 20, 21, 24, 26, 27, and 29 through 32 that depend from claim 1.

Claims 3, 14, 17, 24, 28 through 30, 32, 36 through 39, 41, and 43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa and Barradas as applied to claim 1 above, and further in view of Ferber et al. U.S. Patent No. 6,385,795 (hereinafter "Ferber").

Serial No.: 10/661,006

Group Art Unit: 3751

Claims 3, 14, 17, 24, 28 through 30, 32, 36 through 39, 41, and 43 depend from claim 1. Claim 1 provides for a remote control.

Kurosawa and Barradas are described above. Ferber provides a bath apparatus that can be used to provide, heat, massage, and bubbles to body parts, such as the feet.

As discussed above, Applicants respectfully submit that Kurosawa and Barradas alone or in combination fail to disclose or suggest a remote control, as provided by claim 1.

Ferber provides that "a selector 42 is located on upper surface 18 of bath chamber 12, wherein selector 42 is rotatable by a user to selectively provide various combinations of heat, massage, and bubbles to the feet". (col. 4, line 46-49). As clearly shown in Figure 1 through 3 and 9, the selector of Ferber is not a remote control, as recited by claim 1. Therefore, Ferber cannot cure any deficiency noted above with respect to Kurosawa and Barradas.

Therefore, Kurosawa, Barradas, and Ferber alone or in combination do not disclose or suggest a remote control, as recited in claim 1.

Claims 3, 14, 17, 24, 28 through 30, 32, 36 through 39, 41, and 43 depend from claim 1, and, thus, are also patentable over Kurosawa, Barradas, and Ferber alone or in combination. Reconsideration and withdrawal of the rejection are requested.

Claims 12 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa and Barradas as applied to claim 1, and further in view of Morton U.S. Patent Application Publication No. 2003/0220593 (hereinafter "Morton").

Claim 12 depends from claim 1, and, thus, claim 12 includes all the features of claim 1.

Claim 13 depends from claim 12 that further depends on claim 1, and, thus, claim 13 includes all the features of claim 1.

Serial No.: 10/661,006

Group Art Unit: 3751

Kurosawa is described above. Morton is assigned to the same assignee as the application, Conair Corporation. Morton provides a foot spa with a reservoir for receiving feet placed therein for therapeutic massaging.

As discussed above, Kurosawa and Barradas, alone or in combination, do not disclose or suggest a remote control, as recited in claim 1.

Morton provides "a touchpad control unit 60 for controlling the operational features of foot spa 5." ([0019], lines 1 through 2). As clearly shown in Figures 1 through 4, the touchpad control unit of Morton is not a remote control, as recited by claim 1. Therefore, Morton cannot cure any deficiency noted above with respect to Kurosawa.

Reconsideration and withdrawal of the rejections to claims 12 and 13 are requested.

Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa, Barradas, Ferber, and further in view of US Patent No. 6,805,678 to Cafaro (hereinafter "Cafaro").

Claims 18 includes all of the features recited in claim 1. Claim 1 provides a remote control.

As discussed above, Applicants respectfully submit Kurosawa, Barradas, and Ferber, alone or in combination, fail to disclose or suggest a remote control, as recited by claim 1.

Cafaro provides a "[s]witch 144 is disposed in the tub shroud 110, and is electrically connected to the electrical components within the tub housing 106 and to an external power supply (not shown)." (col. 2, lines 64-67). As clearly shown in Figure 2, the touchpad control unit of Morton is not a remote control, as recited by claim 1. Therefore, Morton cannot cure any deficiency noted above with respect to Kurosawa, Barradas, and Ferber.

Serial No.: 10/661,006

Group Art Unit: 3751

Thus, Kurosawa, Barradas, Ferber, and Cafaro alone or in combination fail to disclose or suggest a remote control, as provided by claim 1. Claim 18 depends from claim 1, and, thus, is also patentable over Kurosawa, Barradas, Ferber, and Cafaro alone or in combination. Reconsideration and withdrawal of the rejection are requested.

Claim 25 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa and Barradas, and in further view of U.S. Patent No. 6,598,244 to Yeh.

Claim 25 provides for all of the elements recited in claims 1 and 17, and further provides an ion and/or ozone emitter for emitting ions into the fluid.

Yeh provides an ozone water foot massager that has a water compartment including a chamber formed therein for receiving water or other fluid therein.

As discussed above, Applicants respectfully submit Kurosawa and Barradas, alone or in combination, fail to disclose or suggest a remote control, as recited by claim 1.

Yeh does not disclose or suggest a control, let alone a remote control, as recited by claim 1.

In addition, Yeh merely provides that the "ozone and the fluid pumped through the tubular member 300, by the water pressure pump 34, may thus be suitably mixed together and mixed with each other into an ozonized water, and the well mixed ozonized water may then be supplied into the recess 23 of the container 20 via the nozzle 41". Thus, Yeh does not disclose or suggest an ion and/or ozone emitter for emitting ions into the fluid, as recited by claim 25.

Therefore, Yeh does not disclose or suggest a remote control, as recited by claim 1 in which claim 25 depends therefrom, or an ion and/or ozone emitter for emitting ions into the fluid, as recited by claim 25. Reconsideration and withdrawal of the rejection are respectfully requested.

Serial No.: 10/661,006

Group Art Unit: 3751

Claim 40 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kurosawa, Barradas, Ferber, and in further view of US Patent No. 5,974,909 to Bauer et al. (hereinafter "Bauer").

Claim 40 provides for all of the elements recited in claims 1 and 17. Claim 1 provides a remote control.

Bauer provides a control knob.

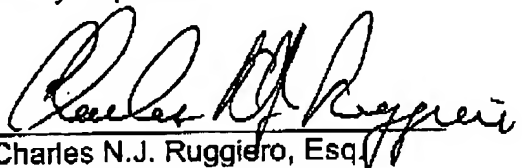
As discussed above, Kurosawa, Barradas, and Ferber alone or in combination fail to disclose or suggest a remote control, as provided by claim 1.

Cafaro also fails to disclose or suggest a remote control as provided by claim 1. In contrast, Cafaro provides a control knob, as clearly shown in Figure 1.

Thus, Kurosawa, Barradas, Ferber, and Bauer alone or in combination fail to disclose or suggest a remote control as provided by claim 1. Claim 40 depends from claims 1 and 17, and, thus, is also patentable over Kurosawa, Barradas, Ferber, and Bauer alone or in combination. Reconsideration and withdrawal of the rejection are requested.

In view of the above, reconsideration and withdrawal of the rejections and passage of this application to allowance are respectfully requested.

March 6, 2006


Charles N.J. Ruggiero, Esq.
Registration No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, LLP
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
Tel: (203) 327-4500
Fax: (203) 327-6401